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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/704,703 11/03/00 NISHIMURA

N 35.G1008-CIP

005514 WM02/0327
FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK NY 10112

EXAMINER

NEYZARI, A

ART UNIT

PAPER NUMBER

2651

DATE MAILED:

03/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/704,703

Applicant(s)
Nishimura

Examiner
ALI NEYZARI

Group Art Unit
2651



☒ Responsive to communication(s) filed on Nov 3, 2000 (Reissue)

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-5 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 1 and 2 is/are allowed.

☒ Claim(s) 3-5 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☒ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: JP 4-230265, filed Aug 28/1992

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 2651

Reissue Applications

Priority

Acknowledgment is made of applicant's claim for priority under 35 U.S.C. § 119. The certified copies (JP 5-038138 and JP 6-022653) have been filed in parent application, Serial No 07/389579 , filed on Aug 26/ 1993.

Preliminary Amendment Acknowledgment

Receipt is acknowledged of Preliminary Amendment filed 11-3-2000 .

Original Patent

The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

Information Disclosure Statement

Every reference cited in the original application must be cited in Reissue application prior to allowance. Please provide a copy of PTO-1449.

Art Unit: 2651

35 U.S.C. 251 Rejection

Claims 3-5 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application.

Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

Broadening attempts to "recapture" claimed subject matter which was deliberately added, to overcome a rejection in the original application. Claims 6 and 7, in original application, were amended twice, on July 8/1996 and on April 2/ 1997.

Allowable Subject Matter

Original claims 1-2 are allowable over the prior art of record.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to **ALI NEYZARI** whose telephone number is **703-308-4906**. The examiner can normally be reached on **MONDAY-THURSDAY** from **7:00 AM** to **5:30 PM**.

The fax phone number for this Art Unit is **703-305-9731**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is **703-305-4700**.

Ali Neyzari
Primary Patent Examiner
Art Unit 2651
3-26-2001


ALI NEYZARI
PRIMARY EXAMINER